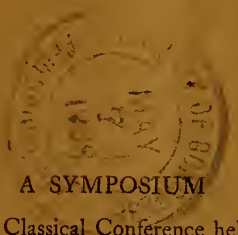
LC 1021
.C46

SUPPLEMENT TO UNIVERSITY BULLETIN
New Series Vol. VIII No. 14

THE VALUE OF HUMANISTIC, PARTICULARLY CLASSICAL, STUDIES AS A PREPARATION FOR THE STUDY OF LAW, FROM THE POINT OF VIEW OF THE PROFESSION



A SYMPOSIUM

From the Proceedings of the Classical Conference held at Ann Arbor, Michigan
March 27, 1907

Reprint from the *School Review*, June, 1907

Monograph

THE VALUE OF HUMANISTIC, PARTICULARLY CLASSICAL, STUDIES AS A PREPARATION FOR THE STUDY OF LAW, FROM THE POINT OF VIEW OF THE PROFESSION

A SYMPOSIUM

From the Proceedings of the Classical Conference held at Ann Arbor, Michigan
March 27, 1907

Classical conference at Ann Arbor, Mich., 1907.

Reprint from the *School Review*, June, 1907

LC1021
.C46

THE SCHOOL REVIEW

A JOURNAL OF SECONDARY EDUCATION

VOLUME XV
NUMBER 6

JUNE, 1907

WHOLE
NUMBER 146

A SYMPOSIUM

ON THE VALUE OF HUMANISTIC, PARTICULARLY CLASSICAL, STUDIES AS A PREPARATION FOR THE STUDY OF LAW, FROM THE POINT OF VIEW OF THE PROFESSION[1]

I. THE VALUE TO THE LAWYER OF TRAINING IN THE CLASSICS

MERRITT STARR
Of the Chicago Bar

In most of the summaries of the faculties and qualities employed by the lawyer, a prominent place is given to the primary faculty of "common sense." This means "the correct sense of common things"—that is, sound judgment in affairs, or sound judgment. The significance of this and its bearing upon our subject are found in the emphasis laid upon "judgment" as the lawyer's chief requisite.

Starting with native endowments of intelligence and common sense, in what should the lawyer seek training by his pre-

[1] Part of the programme of the Classical Conference at Ann Arbor, Mich., March 27, 1907.

Through the kind assistance of the Board of Regents of the University of Michigan and the courtesy of the publishers of the *School Review*, it has been possible to secure a number of reprints of this symposium for distribution. Those desiring a copy may address (inclosing a two-cent stamp for postage) MR. LOUIS P. JOCELYN, Secretary Michigan Schoolmasters' Club, South Division St., Ann Arbor, Mich.

The Symposium will be continued, with a discussion of the value of humanistic studies as a preparation for the study of theology, at the Classical Conference of 1908. The papers and addresses upon "The Value of Humanistic, Particularly Classical, Studies as a Preparation for the Study of Medicine and of Engineering," at the Conference of 1906, were published in the *School Review*, Vol. XIV (1906), pp. 389–414.

liminary education; and what studies will most aid him to such training? The answer is self-evident—training in judgment, and training in affairs. Conceding at once that training in the classics does not give training in affairs, it is sufficient for our purpose to maintain that training in the classics does give training in judgment. And here is the *crux* of the whole matter. The advocates of training in affairs have deemed the case settled by the admission that such training is necessary, and that it is not afforded by the classics. No question is made or admitted of the proposition that the lawyer needs training in affairs, and that he cannot get that training from the classics. That must be obtained in some other way.

But it is maintained for the classics (1) that they do in a superior degree give training in judgment; and (2) that training in affairs is in a way inevitable, while training in judgment is not; and that therefore the training which needs the solicitude of the teacher, the pupil, and the public is training in judgment.

The contentious work of the lawyer consists largely of such as the following:

1. The *ascertainment* of facts and proofs of facts.

2. The *ascertainment of the law* and of the authoritative statement of the law.

3. The *interpretation* of the law, to develop its relation and application to the facts.

4. *Expressional* work, viz.: The convincing the tribunal, and persuading it to adopt his view.

5. The *record-making* work, which secures the correct and permanent recording and carrying into effect of the result attained.

Each of these has its counterpart operation; thus:

1*a*. Ascertainment of *want* of facts, or facts of disproof of the opponent's contention.

2*a*. Ascertainment of dominant or distinguishing rules of law eliminating the rules relied on by the opponent.

3*a*. Interpretation of the facts and rules relied on by the opponent, in order to develop their want of relation and application to each other and defeat the conclusion contended for by the opponent.

4*a*. Expressional work in inducing the tribunal to reject the course sought by the opponent.

5*a*. The record-making work of the defeated lawyer, viz., the securing of a record disclosing the *errors* of the court upon which an appeal may be based and a reversal secured.

The advisory work of the lawyer involves all these steps, and requires something more, viz., the carrying-on of all these operations *in advance* of the event, in order to guide the client and so direct his conduct that when the event occurs it shall inure to the client's welfare. It involves the carrying-on of the entire transaction, including the lawsuit itself, in thought and imagination, the ascertainment of the probable result, and the direction of the client's steps to avoid dangers and secure the benefits involved. And this advisory work constitutes by far the greater portion of the lawyer's task. What faculties are most employed in it? The answer is plain:

In (1), the *ascertainment of facts,* the faculty most employed is that of *judgment,* the faculty which *measures, weighs, compares, contrasts,* and *balances* (*a*) the conflicting statements of witnesses; (*b*) the conflicting phases of a complicated state of facts; (*c*) the conflicting motives, interests, prejudices, and tendencies of the parties and the witnesses.

In (2), the *ascertainment of law,* the faculty most employed is that of judgment which *measures, weighs, compares,* and *balances* the seemingly conflicting statements of the law from different precedents, statutes, and principles; that determines which precedent, which statute, which principle dominates the matter in hand, takes it out from under the operation of some other, and so controls the result.

In (3), *interpretation,* the faculty most employed is that of judgment which *measures, weighs, compares, and balances* the evidences and reasons for conflicting interpretations, and selects the one which should prevail.

But here another set of faculties bears an important part in the lawyer's work, viz., the faculties which discover and develop the diverse meanings of a rule, viz., the *dialectic* faculties. Those are the faculties of critical examination or analysis, of logic, of "invention" (i. e., "discovery" of meanings and expression), of discussion; and with the operation of each of these the use of the faculty of judgment is interwoven.

In (4), *the expressional work,* the dialectic and the *rhetorical* faculties are all brought into play. The latter include the

entire range of the language faculties—those of composition, systematic arrangement, style, memory, and active expression. In the employment and control of these language faculties the faculties of judgment are continually called into action.

In (5), *the record-making work,* the language faculties play a leading part, in selecting and forming the terms of the judgment or decree, and the permanent portions of the record on which it is based.

It appears, then, that the faculties of judgment and the linguistic faculties are pre-eminent in the work of the lawyer, and should be developed by special education. What study will best train his faculties of judgment and of language? I believe that, next after a thorough training in the use of the mother-tongue, the study of the classics will best accomplish this result.

In the presence of a company of teachers it is not necessary to dwell upon the details by which this is demonstrated.

In translating a long sentence from Greek or Latin, the student has to do with, say, 100 words. Each of the fifty more important of these words has from five to fifteen meanings in English. The student must measure, weigh, compare, contrast, and balance these different meanings to insure that he has found (1) the real meaning of the original; (2) the best English equivalent for it; (3) the best English expression of it. He will find that the connectives, particles, and seemingly less important words are themselves *signs* by which he will be guided to the proper interpretation of the more important words, and aided in the selection of English equivalents. Like the discards in whist, these smaller members become most important indications of the interpretation of those to come. He will find that several of the words are in forms common to several distinct cases, as datives and ablatives, or to several different forms of thought as, for example, the several different uses of the subjunctive; and finally that the whole sentence may be treated as belonging to one or another of several different rhetorical forms. And he must measure and weigh and compare and contrast and balance at each stage of his work, to be sure that he is going right, and selecting the correct case and form.

Oh, what trials to the quick and accurate mathematical boy, who can compare algebraic squares mentally, and solve equations by inspection; to the observing scientific boy, who can classify the game birds of his locality at a glance! Here he must do something more. He must exercise his judgment. And that undeveloped faculty awakens and grows by exercise, and gradually acquires something of readiness and skill like unto the boy's skill with equations and game birds.

And the classics are the means of this acquisition.

This discussion is not intended to prescribe for the exceptional genius, for the Abraham Lincoln or John G. Johnson, who will rise with any education, or with no education, or with self-education. And the question is not whether the youth who hopes to be a lawyer shall be educated, nor whether he shall be educated in the law, but *what studies he shall pursue before taking up the law.* Comparing the classics with (*a*) mathematics, (*b*) the modern languages, (*c*) the natural sciences, (d) the applied sciences, (*e*) historical studies, (*f*) philosophical studies, I hold that the study of the classics yields superior training in the faculties of judgment and of language, and that these are what he most needs.

We could easily take up the comparison of the classical studies with those in each of the other groups of studies above noted, and find that, while each of the other groups has some point of excellence in which it surpasses all others, yet in the discipline of the faculties which *measure,* and *weigh* and *compare,* and *contrast* and *balance* the different elements, and *exercise selection* and make decision among them, the study of the classics surpasses them all.

(*a*) In mathematics, broadly speaking, each problem admits of but one answer, obtained in one way. The faculties of precise definition and accurate operation and statement are greatly disciplined, but the faculties of judgment, less so.

(*b*) In the modern languages (1) there is a royal road to each one of them, viz., taking a vacation in its mother-land; and (2) the modern forms of speech are corrupted in use and aided

by object-lessons to such an extent as distinctly to lessen their value as discipline for the judgment.

(*c, d*) The natural and applied sciences pre-eminently discipline the powers of observation.

(*e, f*) The historical and philosophical studies (after their initial stages, as *information studies*) are *higher forms of cultivation of the judgment.* They need a preliminary training of the judgment to build on, just as do the study and practice of the law. If we consider the training of the linguistic and dialectic faculties, we shall find that (after a thorough training in the use of the mother-tongue) the classics come first and the philosophical studies next. The lawyer then should study the classics and the philosophical studies.

It should be realized that the chief business of the lawyer has become that of business *adviser;* that the writing and interpreting of contracts, charters, ordinances, statutes, wills, by-laws, and business regulations, and advising with reference thereto, constitute his chief occupation. In all this he is constantly required to distinguish closely between the thought and the words in which the thought is expressed. Merely to illustrate, in these instruments such forms of thought as express alternative future possibilities are in constant use. In the discussion of adverse interests and claims the "supposition contrary to fact" is continually involved. Other things being equal, the mind trained by the rules and exceptions of classic syntax and their noble examples in classic literature has a familiarity with the *forms of thought,* as distinguished from the *words* in which they are expressed, which nowhere else, as I believe, can be acquired so well.

The objection that the classics are uninteresting, hard, and dry, is put forth by the boy himself. And from every point of view we give this objection too much importance. But to the active practicing lawyer I beg to say that this is an important element in their value.

A lawyer must needs study uninteresting old statutes, dry and ancient blue books, stupid, antiquated ordinances, early black-letter precedents, to find out what the law is and what his client's

rights are. Unless he can study alertly, patiently, and discriminatingly all these uninteresting, hard, and dry sources of the law and bases of rights, he will never reach the higher walk of his profession. Many men have natural aptitude for this. Many men have such superior ambition and industry that they will learn how to do this work when the necessity for it overtakes them. Of them we do not speak. But for the average youth who aims to become a lawyer there is great need that he be given special *training in the interpretation of documents* which are uninteresting, hard, and dry. He will have no end of it to do in his profession. He should conquer this preliminary difficulty before he enters upon his work. And while hard work for hard work's sake is a solecism, hard work *in something worth while,* for the strength and skill to be gained thereby, is the essence of all disciplinary education. And this applies to the study of the classics by the would-be lawyer.

I have said nothing of the fact that there are thousands of legal terms adopted bodily from the Latin; that the terminology of the law is largely a Latin terminology; that our law itself is built upon the Roman law as a foundation, to a degree that only our best lawyers realize; that most of the legal conceptions which are daily employed in the profession are largely Roman in their origin; that the full-blown judicial statements with which the early common law abounds were many of them taken almost bodily from the Roman law; that, in the language of Sir MATTHEW HALE, "a man could never well understand law as a science without first resorting to the Roman law for information;" and he lamented that it was so little studied in England (1 Kent, 546).

In all this the person who appreciates the value of the scientific treatment of law will find powerful additional arguments for the study of the classics. The Latin of the *Institutes* is mainly post-classical in the technical sense, but may be treated as classical for present purposes. I have often regretted that the colleges in their offerings of Latin do not more often include the *Institutes* of Gaius and Justinian, which would familiarize

the student, not only with classical forms of thought and expression, but with legal conceptions also.

We know, of course, that the slang of the street, the jargon of the market-place, and the vogue of the moment pervade the current use of English. This is true of every other language in current use. We know again that among the thousand books put forth each year, but one or two survive and are worth our study. And we are oft-times perplexed to select those two, and avoid loss of time and effort upon the unworthy. But among the classics the winnowing hand of time has made the selection for us. The slang, the jargon, and the vogue have passed. The clamorous utterances of the ephemeral and the unworthy have perished. The fittest, however, survive.

> One accent of the Holy Ghost
> The heedless world hath never lost.

And these are our classics; these the testings and selections which the ages have pronounced worthy. It is the absorption of these, the mastery of their spirit, and the equipment that they yield, which give to the educated lawyer his special strength; which give the educated man in every field his sense of kinship with the great minds of all ages; which store his mind with the resources of the world; which give the spirit of light and leading which he needs.

The man who knows his classics goes through the work of life saying:

> I have heard the lofty paeans
> Of the masters of the shell,
> Who have heard the starry music,
> And recount its numbers well;
> Olympian bards who sung
> Divine ideas below,
> Which always find us young
> And always keep us so.

And he has within him the sense of largeness and of power that gives him in some degree, however small, a fellowship with the greatest and the noblest—with

> Caesar's hand, and Plato's brain,
> The Lord Christ's heart, and Shakespeare's strain.

II. THE STUDY OF GREEK AND LATIN AS A PREPARATION FOR THE STUDY OF LAW

LYNDEN EVANS
Of the Chicago Bar

If one were to select a single word to express the aims and ambitions of the present day in substantially every field of human effort, that word would be "efficiency." The *result* is everywhere the principal thing sought after, and, with regret it must be said, the method of reaching the result is considered with more or less indifference. This applies even to the training of lawyers. There is a widespread indifference upon the subject, in general, as well as a tendency away from the study of the classics as a preliminary professional training.

That the study of Latin and Greek has tradition on its side is no longer an effective argument. We should, therefore, abandon that argument, and we may abandon it without regret; for in the first place, it is a waste of time to advance an argument which we know will not be considered by the jury to which we are addressing it—such procedure only wearies the hearers; and, in the second place, there is a change in the conditions surrounding the practice of the law which calls for a restatement of what is necessary in preparatory courses, and if we found our arguments upon present needs, we shall get a hearing before those whom we desire to reach.

The changes in conditions now demand greater breadth of view in members of the bar, and the reason is not far to seek. From the days of Magna Charta to our Civil War the legal profession furnished the leaders, and was the most important factor in the development of political liberty. Its writs of habeas corpus and trial by jury have been among the means of developing individual freedom and a true democracy. So long as the pressing questions were those relating to the basic rights of men, the lawyer necessarily, in the practice of his profession, was compelled to consider the rights of all members of society, and in a measure to keep in consideration the status of all citizens or subjects; and this naturally developed a breadth of

view. But all these great and important questions have been substantially settled. No longer do the virtues of the writ of habeas corpus and the right of trial by jury serve as the grandiloquent perorations of Fourth of July speeches. Our questions today are what Mr. Lecky would call "money disputes," and these have a narrowing tendency. While the lawyer of today has to know the wider and more complicated business relations that now exist, and know them better than the lawyer of half a century ago, the relations are financial, absolutely; human interests and the development of society are less and less necessary subjects of inquiry in the actual practice of our profession, and we must therefore meet the narrowing tendency by a broader training in order to produce the best result. Mere breadth of view in itself will be ineffective unless it is accompanied by the power of generalization, for laws themselves are but generalizations legitimately drawn from concrete conditions. Let us, therefore, taking no acount, for the moment, of the development of the mind in accuracy of detail, pass to the more important subject, to that breadth of view which enables the individual to generalize correctly, and hence to be able to apply those generalizations to specific facts submitted to him for his opinion. Let us meet the issue squarely, not by praising the value of Latin and Greek as a means of training, but by comparing it with modern languages, mathematics, and the natural sciences.

I. (*a*) The modern languages are in their nature changing, and current language is full of colloquial, if not slang, phrases which are not accurate expressions of thought. In this respect the dead languages have the advantage. The student who studies the German of Goethe and Schiller will probably remember no more about those works twenty years after he has studied them than he would of Homer or Virgil; yet in neither case would it be reasonable to deny the disciplinary value of the study. But the main advantages of dead languages over modern languages is that the subject-matter of the literature of modern languages is our complex modern life, full of the emotions of pity and sympathy. The subject-matter of the literature of the dead languages is more remote from us; it stimulates thought rather

than emotion; the records of wars, the great jury speeches of Demosthenes and Cicero, the laws and political constitutions of the peoples of antiquity, when properly studied involve accurate expression and logical rather than sympathetic development. Nor are the poems of Homer or Virgil an exception; their appeal to us is not emotional in the modern sense; the subjects stressed in Greek and Latin literature are the conduct of life and the government of men and the lessons of history—the subject-matter of that literature itself educates a lawyer.

(*b*) Again, the advantage of Latin and Greek over any modern language grows out of the fact that our own tongue consists of these languages or their derivatives grafted upon an Anglo-Saxon stock. We cannot learn Latin and Greek without learning English better; and he who is a good Latin grammarian is a good English grammarian without further study. It was James Russell Lowell who said that he believed he had never made a mistake in the meaning of an English word until one day in a hurry he consulted an English dictionary instead of a Greek or Latin dictionary for the root meaning of the word sought. For the man who has studied Latin and Greek, the saving of time and labor that comes from knowing the meaning of an English word of classical origin met with for the first time is a large element in the economy of time; and in addition, because he knows the fundamental meaning of the word, he has an accuracy of definition that cannot be obtained from an English dictionary which gives all the various uses of a word without making prominent the root meaning in the foreign language.

(*c*) A third advantage arises from the fact that Latin law has been grafted upon Anglo-Saxon law. Our practice in chancery borrows from the civil law both its substantive enactments and in a large measure its practice, and all our probate or surrogate courts, by whatever name they are known in the various states, are simply inheritors of the ecclesiastical law of England so far as applicable to American conditions. The civil law, and not the common law, controls descent and heirship in almost all states throughout the Union and in England. It would seem a waste of time to attempt to elaborate the importance, for the

lawyer, of a knowledge of the language in which is written so large a part of the law which is in full force and effect today throughout this Union.

(*d*) It might be claimed that the last argument was merely academic, were it not for the fact that from the ingrafting of Latin upon our Saxon stock of law have come also Latin expressions of commonest use. Our writs are Latin words. Many of our forms of pleading and all the great principles of jurisprudence have been summarized in brief Latin statements which we call maxims; in an age when "brevity" is the second word to "efficiency," the practical value of this cannot be underestimated. To the legal mind the fact that any argument made comes legitimately and rationally within the scope of one of those great maxims which have guided our courts for centuries gives it weight and invites consideration, because it shows that the argument depends upon no novel or fictitious basis, but is in agreement with the experience of our race in the administration of justice.

II. The comparison between the classics and mathematics in point of training is nowadays less insisted upon; nor do lawyers, as a rule, feel that any great question can be raised here, for the importance of mathematics is unquestioned. But should the question arise whether, after the elementary principles of mathematics and the elements of the Latin or Greek languages have been mastered, to which additional time should be given, we must say that, since mathematics deals only with the relations of numbers, while language and literature deal with the expression of the relations, not only of numbers, but also of life and its rules of conduct, the study of the languages must give the wider vision of the two.

III. But the real conflict in the feeling of today is in regard to the supposed advantages of the study of the natural sciences over that of the ancient classics. Even if it be generally agreed that the study of mathematics, despite its greater finality of conclusion and exactness of process, is, from the point of view of this discussion, inferior to the study of ancient languages because its subject-matter is so unlike human conduct—the rules of mathe-

matics having no analogy to the rules of human life—it is claimed that the study of the natural sciences will give an equal, if not superior, training in accuracy through exact observation of the processes of nature, and that the knowledge thereby gained is more fruitful than that acquired from the study of the Latin and Greek languages. The question involved is not as to what knowledge itself is the more useful or the more easily remembered, but which is the better discipline for the mind in preparation for the study and practice of the profession. In the study of the natural world, teachers are often misled by the fact that their pupils show a greater interest in such subjects than in the comparatively abstract study of language, the cause of this interest being largely the pleasure of sense-perception. The eye and the ear easily acquire what the reasoning mind must with difficulty assimilate. But this very fact makes it reasonable to suppose that training in the sciences will not give the power to deduce abstract rules of conduct because the sense-interest dominates the thought-interest. The subject-matter of the physical sciences, furthermore, brings the student ever back to the immutable laws of nature, and so, like mathematics, it fails to aid him directly in studying the mutable conditions of human conduct. The interests involved are not human, the operation of natural laws is too unlike the collective effect of individual free will. The very statement of this fact ought to satisfy the reason upon this point and make applicable the legal maxim, *res ipsa loquitur*.

IV. Another important desideratum in the training of a lawyer is accuracy of interpretation. While one is studying Latin and Greek he is being trained in a method very like that which he must pursue in construing a law. Pick up a statute just enacted, and begin to study it carefully to find out what its full meaning and effect is, and you are doing precisely the same thing as when you take a passage of Livy or Tacitus and endeavor to find its exact meaning. Every word must be weighed, and the point of its position in the sentence determined. The effect of former laws in a case is like the effect of the preceding sentences or the context; and the meaning of that sentence as related to the following sentences, as to whether it

makes a complete story, is like the consideration of full meaning of the statute itself in connection with the rest of the substantive law on the question involved. This determination of the meaning of statutes is one of the most practical duties of a lawyer. It will hardly be maintained by anyone that, as a preparation for this sort of work, the natural sciences or mathematics will have a practical value in training equal to that of Greek and Latin.

I have not attempted to discuss those very important, but apparently less practical, sides of the question which are most often dwelt on at length—such as the development of the taste, the acquiring of elegance of expression, and the distinction of learning—which are so often urged in favor of the study of the classics, because, as a rule in the discussion of this subject, the force of such considerations is admitted by those who differ from us. I have felt the need of presenting this question in a practical and concrete way, because my experience in lecturing to law students has led me to believe that this is the line of argument most apt to be effective at the present day, or at least while the fever of hurry is still a distinguishing characteristic of the age.

Furthermore, that the argument in favor of classical study may be effective, it must be of a kind which will ordinarily be appreciated by young men about to begin the last stages of study before actually engaging in their work in life, and not of the kind which will appeal only to older men whose successes and failures have taught them to view these questions with a greater regard for the value of professional training as it fits in and becomes part of the experience of life than as a means of immediate financial return. Whichever class of argument may be the more effective, we shall all agree that the day has gone which could prompt the couplet of Edmund Waller:

> Poets who would marble seek,
> Must come in Latin or in Greek.

Nevertheless, we cannot forget that, with very few exceptions, lawyers who have come to distinguish themselves in their profession and to be of use to the world have come *through* Latin or *through* Greek.

III. HUMANISTIC, AND PARTICULARLY CLASSICAL, STUDIES AS A PREPARATION FOR THE LAW

DEAN H. B. HUTCHINS
Department of Law, University of Michigan

Aside from the elementary branches, no particular subject is absolutely essential as a basis for the study and practice of the law. In this respect the law occupies a place somewhat different from that of the other learned professions. The student and practitioner of medicine must of necessity get a substantial *scientific foundation* for his professional work. This for him is an absolutely essential prerequisite. For the professional courses in engineering a special and definite *scientific* preparation must be made; without it nothing but the most ordinary work in engineering can be accomplished. And it is probable that for theology, work along certain well-defined lines is desirable, if not essential. But it by no means follows that, because success in the study of the law or in the practice of it does not depend upon the mastery of particular subjects, a thorough preparation therefor is not necessary. The contrary is most emphatically true, particularly at the present time. The law is a practical subject, most intimately connected with the private interests of the citizen, and with questions affecting his public rights and obligations; but it is at the same time a science, the mastery of which requires a mental equipment above the ordinary. No one can hope for much success as a student of it without adequate preliminary training, or in its application as an art, without being prepared for the keenest kind of intellectual competition.

Upon the very threshold of his work the law student discovers that his success is to depend very largely upon his equipment—not upon his having mastered any particular subject, but upon his having made himself master of his own mental processes to such an extent that he can do independent and original thinking. The fundamental principles of the different departments of the law must be mastered, and that their full significance may be appreciated, their historical development through the successive decisions of the courts, must be traced. But he

soon discovers that his task embraces more than the memorizing of principles, and the study of their origin and growth. His eyes are soon opened to the fact that the serious business of the law student consists in the application of general principles to the solution of problems involving new conditions and varying statements of fact. And then, too, he discovers directly that, although the body of the settled law is large, there are continually arising questions upon which the law is unsettled, and whose solution requires the harmonizing, if possible, of conflicting decisions, or, where this is not possible, the determination as to the weight of reason and authority. He soon discovers that for every step taken and for every conclusion reached a logical and forceful reason must be assigned. It is needless for me to suggest that work of this nature, if successfully accomplished, calls for analytical power and constructive ability; it demands the informed and trained judgment of an educated man. While occasionally one having a natural aptitude for the law may be able, even with limited preparation, to master its principles and the art of its application, and to push to the front with apparent ease, the fact remains that, as a rule, the appreciative and successful study of jurisprudence demands preliminary training of a high order and of the thorough and rigorous kind.

And if such training is necessary for the student, it is certainly doubly so for the practitioner. He must be master, not only of legal principles, but also of the art of applying them to the actual affairs of life. The successful lawyer must not only have in mind and ready for immediate use the essential and fundamental doctrines of the law, but he must have his faculties so disciplined and under control that he is always prepared for emergencies. Men with ordinary equipment can do only ordinary things and fill the ordinary places, but the men who through ability and training are equal to the unexpected are bound to go to the front. More perhaps than the man in any other profession does the lawyer need a large range of general information. His work is so varied, and touches life at so many different points and frequently in so unexpected a way, that he will constantly find himself embarrassed and handicapped without the intel-

lectual masterfulness that comes from thorough and vigorous preliminary study. Unless his attention is especially challenged to the fact, the layman rarely appreciates the extent and variety of learning, aside from the strictly professional, that the lawyer must from time to time summon to his aid in the course of a varied career at the bar. If he has been liberally and thoroughly trained, the knowledge necessary for the emergency may be his; but if it is not his, he has what is quite as useful—the ability to acquire at short notice and under pressure the necessary special information.

The notion that I seek to impress, that large success at the bar demands great versatility and thorough general training, may perhaps be made more apparent by illustration. The litigation in hand may require the examination, by the lawyer in charge, of learned experts in some particular field of science—in electricity for example. In order to develop his case through the examination of his own experts, and to detect error and expose fallacies in the testimony of the experts of his adversary, it is absolutely essential that he have a working knowledge of the specialty. Moreover, in the argument of the case he must become in a sense the instructor of the court and of the jury, if there be one; for he must make plain to them the full significance of the scientific testimony adduced and its bearing upon the controversy that they are to decide. The full extent of the task will be appreciated when it is remembered that in many such cases, perhaps in most of them, both court and jury are ignorant of the ordinary and fundamental principles of the science involved, and must depend for their enlightenment entirely upon the skill of the attorneys in the development of the case through the testimony and its presentation in the argument. The case may be one involving the question of mental capacity, either to do a particular act, or to appreciate the moral and legal consequences of a particular act. A controversy of this kind plunges the lawyer at once into the uncertain domain of the alienist, and, in order that he may do his full duty to his client or the public, a working knowledge of the various forms of insanity is an absolute necessity. The extent to which a preparation in this regard

at times becomes necessary, and the uses to which such preparation may be put, are well illustrated in the trial in New York that is just now attracting so much public attention. Another striking illustration of the uses to which knowledge that apparently has little or no bearing upon the practice of the law may be put in a legal proceeding, is to be found in the recent insurance investigation by the Armstrong Committee in the city of New York. The remarkably brilliant work of Mr. Hughes in connection with that investigation has placed him in the front rank of American lawyers. His attitude upon public questions, and the belief of the people that he has the strength and the courage to accomplish the reforms that he advocates, together with his reputation as an honest and brilliant lawyer, have opened up for him a career outside of his profession; but it is simply to his work as a lawyer before the Armstrong Committee that I would direct attention. The secret of his achievement there was his preparedness, and the secret of his preparedness lay in the fact that, while securing a thorough preliminary training, he became a profound mathematician. The mathematics of insurance and the intricacies of insurance methods were to him an open book. His investigations, therefore, were thoroughly and rapidly made, and his conclusions fortified by a knowledge of details that to the uninitiated was simply marvelous. He was able to meet the insurance expert upon his own ground and to confound him by practical demonstrations of his wrong-doing.

But further illustration is probably unnecessary. It must be apparent, I think, that the lawyer, if he is to win a place in the profession, must be able to summon to his aid such special knowledge as may be necessary to meet the exigencies of his practice as they may arise. It cannot be expected, of course, that any considerable part of this will be secured through preliminary study. Occasionally such study may furnish it. But preparatory training, if of the proper sort, will furnish what, in a large way, is vastly more important than special knowledge, namely, the ability to assimilate and put to practical use, as the occasion demands, the results of the work of other men.

The foregoing, by way of introduction, leads naturally, I

think, to the suggestion that I desire to emphasize, namely, that preparation for the law should be made by the study of such subjects as will train a man *to acquire easily and rapidly, and to think logically and independently.* And, in my judgment, the subjects the study of which tends to the development of these qualities are those which require of the student strenuous, painstaking, and persistent effort for their mastery. If I could regulate the preparation of law students, I would eliminate from the course all predigested and specially prepared foods, and I would give the young man something that would demand earnest effort on his part to assimilate. While I believe in and advocate a thorough college course as a preparation for the study of law, and while I hope that the time is not far distant when such a course, or its equivalent, may be made a prerequisite for legal study, I am frank to say that the young man who has a thorough, old-fashioned classical and mathematical preparation for college is, in my judgment, much better fitted for the study of law than is the man who during four years in college has dissipated his energy and weakened his power to think clearly and logically by desultory and pointless work in "snap" courses that require little or no effort on his part. But I wish it understood that in making this statement, I do not intend a criticism of the elective system as such, for I believe in it, but I believe also that it should always be so supervised and regulated that disciplinary subjects predominate during at least the first half of the course. Under such a plan the student comes to the specialized work of the last two years with a quickened and strengthened mind and an informed judgment.

And it is because the preparatory study of the law student should be of the strenuous kind that the ancient classics may well take a prominent place in the preliminary course. There can be no question, I think, as to their disciplinary value. It is quite impossible for one to master the elements of Latin or Greek, and to attain a reading familiarity with either of those languages, without a painstaking and continuous mental effort. There must be a persistent training of the memory and a constant exercise of the judgment. For the prospective lawyer there can be no

better discipline than that which comes from the discriminating effort involved in careful translation. The lawyer's professional life must be largely devoted to the interpretation of the law, and to the preparation and interpretation of legal instruments; and the greater his skill in the use of language and in discovering shades of meaning, the greater his effectiveness. But, putting all this aside and conceding, for the moment, that the study of the ancient classics is without practical value, and that whatever we learn of them is soon forgotten, we still cannot escape the fact that the mental power and effectiveness that are the results of that study remain with the man and become a part, and a very large part, of his equipment for the activities of life.

But while I would urge the study of the classics as a part of the preparatory law course largely for their disciplinary value, I would also urge that study on account of the facility that it tends to give in the use of English. As to this there can be no question. There is in regard to this practically no difference of opinion among educators. The study of English can best be made through the Latin language. And that the lawyer needs to know English goes without saying. The most effective men at the bar are those who, with good legal attainments, are able to write and speak simple, clear, concise, and forceful English. I do not mean by this that success at the bar at the present time depends upon oratory, as popularly understood, or upon the arts of the orator, for this is not the fact, but it does depend very largely upon the ability of the practitioner to clothe his ideas in a few words so arranged as to challenge at once the attention. A distinguished English judge has said that a case clearly stated is half won, and there is certainly truth in the suggestion. One of the difficult tasks of the law teacher is to get from the student a clear, concise, and definite statement of the facts of the case that is to form the basis of discussion, and in this part of the work the noticeable superiority of the classically trained student is apparent.

It must be conceded, of course, that the study of Latin is of practical value to the law student by reason of the fact that Latin terms are very generally used in the law. This, however, I

regard as a matter of minor importance, for through the aid of the dictionary the meaning of such terms is easily ascertained. However, a student who has a reading knowledge of the language is able to appreciate the terms at once and without the necessity of special study.

It is hardly necessary to suggest that, if one is to devote himself to the scholarly side of the law, he should be classically trained, and that his knowledge of Latin and Greek should be supplemented by at least a reading knowledge of French and German. The field of the jurist is a broad one, and the ease and thoroughness of his investigations depend very largely upon his ability to reach and master the sources of information through the texts of the originals.

The case that we seek to establish would not be complete without the suggestion that the *culture* value of humanistic study should not be overlooked in the consideration of what should be the training of the prospective lawyer. We are too apt to forget, in these intensely practical times, that the professional man should be first of all the well-educated gentleman. The lawyer should be more than a lawyer, the physician more than a physician, the engineer more than an engineer. Each should have an educational basis that fits him for something outside of, and beyond, his profession. I would not for a moment claim that a man cannot be well educated without a knowledge of the ancient classics, for such is not the fact, but that humanistic study stimulates the mind to seek what is best in literature and art, and furnishes a source of culture and entertainment that broadens the man, and enables him to have an appreciative sense of the value of things outside of the narrow limits of his specialty, cannot admit of doubt.

IV. DISCUSSION OF THE FIRST THREE PAPERS

HON. HARLOW P. DAVOCK
Of the Detroit Bar

Justinian has well said that the whole doctrine of the law may be reduced to three general principles: To live honestly, to hurt nobody, and to render to everyone his just due. It becomes, then, the duty of the lawyer either, as

an advocate, to endeavor to persuade those who administer the law to have those things done which should be done, or, as a judge, or acting in a judicial capacity, to compel the doing of the right. This in itself seems a very simple matter, and the ordinary layman can see no particular reason why a formula should not be made to fit every case, and justice measured out by the yard, according to the size of the garment desired. But, holding the view that "law is the perfection of reason, that it always intends to conform thereto, and that that which is not reason is not law," we see at once how necessary it is that one who enters upon the practice of law should have the most careful preparation for his work; his task requires the delicate application and careful use of the highest faculties with which mortal man has been endowed. Where and how can these faculties be best developed?

The time has gone by when the student chooses a classical course simply because its degree is supposed to be the earmark of a completed education. With the increased development in the sciences and the so-called practical studies, a greater breadth of opportunity for choice of studies is afforded to the student; and we come back to the fundamental query: What is an education? Whatever the process, we shall agree that the trained or educated man is he who has gained the power to concentrate his thoughts, to reason correctly, and impartially to diagnose situations as they present themselves.

Trite enough is the proverb that there is no royal road to learning; but it is not inappropriate to remember that the road without obstructions is not well adapted to develop the resourcefulness of the traveler. The very fact that Latin, Greek, algebra, and the calculus are hard studies is a weighty reason why they should be pursued. It is the severe studies which, by steady grinding, bring out from the rough stone the diamond. I have no more patience with the man who decries this work in ancient languages because it is not practical, than I have with the professor who stated to his class that mathematics were in his mind a mere chaos, a stream through which he had waded, and which was as unreal to him as the stream which disappears in a western desert.

There is undoubtedly a practical use of Latin for the lawyer, as there is a practical use of Greek for the doctor or clergyman; but above all else in importance is the peculiar quality of the training afforded by Latin and Greek, which develops the mind for the analysis of the intricate questions presented in the practice of the law. The modern law school has come to stay. It is becoming each year more thorough, and is recognized as indispensable to the proper preparation for practice at the bar; but equally important should be the educational foundation preparatory to martriculation therein.

I was impressed with the idea, advanced by one of the speakers a year ago, that Latin and Greek are almost always taught by trained teachers. The

German and French course, when properly presented, is most valuable, but the average of teaching in the modern languages is not so high as in the ancient, and the spoken language is much more easily acquired. The competent clerk or waiter in France and Germany, on account of his environment, must write or speak English; but this does not mean scholarship. You stand amazed at the fluency with which a young miss with an English accent explains to you the Palais de Justice at Brussels, and find that she learned our language by visiting a sister in London for two or three months. The man who succeeds in life is he who has gained the command of his own mental processes through close, hard work, such as is inseparable from the study of Latin, Greek, and mathematics.

The question when and how far Latin and Greek should be studied may be left for determination to the educational expert, but I wish to enter my protest against the apparent ease with which other studies at the present time can be substituted. The substituting of superficial polish for deep culture—the substituting of a kind of Chautauqua or lyceum course of lectures for the rigid training of classics, mathematics, and philosophy—is to my mind the imminent peril which presents itself in the present type of college and university curriculum, and surely for no profession is sound and thorough preliminary study more needed than for the law.

Our courts require and demand a clear statement on the part of the counselors who appear before them. A certain rhetorical manner may influence a jury; but back of all is the law, and it is the law as recognized and applied by the keenest minds that must ultimately win. In these days of commercialism and Alladin-like fortunes, of trusts and combinations, let us not forget that it is upon those who prepare laws, who enact laws, who execute the law, who decide the law, that the weal or woe of the nation depends. Whatever makes the interpreters of law intellectually honest, whatever makes them true thinkers and close analysists, is not only for their betterment, but for the betterment of society as a whole. I believe that the humanistic studies will best help prepare the lawyer for his part in life, and I know no greater responsibility than that which rests upon the teachers in our intermediate schools—those who guide, direct, and control the mind of the student in its formative period, who should see to it that the studies of the young student are rightly chosen.

In conclusion, let me say this, that the successful lawyer is he who has not only the body, but the soul, of his profession; as he has been well and truly educated, so will he carefully, conscientiously, and faithfully guide those interests which are either put in his charge, or are presented to him for consideration. In legal training, therefore, let us hold fast to this rigid preliminary classical study; and the results, the greatest and best, will be shown in those who are not the evanescent leaders of the populace, but the true leaders of the people and the bar.

V. DISCUSSION OF THE FIRST THREE PAPERS

HINTON E. SPALDING
Of the Detroit Bar

Since the time of my own graduation from the university, it has been a matter of some solicitude with me that there has been, not only among the students, but also among the faculty, a turning-away from classical study, with an undue emphasis of other lines of university work. And it is because from my own experience, I believe in the value, the great value, of classical training as a preparation for the practice of the law, and because I deprecate the tendency to which I have alluded, that I came out here this afternoon to give such a reason as I might for the "faith that is in me."

It is hardly worth while to discuss further the proposition which is before us, because the argument lies in a narrow compass, and it has already been set forth fully and forcibly. However, as conviction generally depends more upon feeling and upon personal testimony than upon any logical process of argument, it may be worth while to say a word about my own experience as determining my point of view.

It is almost thirty years since Professor D'Ooge gave me my entrance examination in Latin and Greek. I liked classical study, and for that reason, and for no other, I have continued to read the classics ever since; without pursuing any systematic course, I have I think in every year since I left college, and in most of the months of every year, read more or less Greek and some Latin.

In this connection I wish to record a doubt as to the advisability of casting aside classical studies at so early a stage in the college course as seemed to be suggested by Dean Hutchins. You can get the discipline by the end of the freshman year; but unless you have much better preparation in Latin and Greek than it was my lot to have, no man who has finished his freshman year has gotten or is able to get the cream of what is to be had from the study of these languages. You must be able to read at sight—you must be independent of Liddell and Scott; and such a command, of Greek at least, cannot be acquired without a longer preparation. The ability to read Greek and Latin at sight has, in my estimation, a value aside from the disciplinary for professional purposes; in that way, and in that way only, can one get the close and intimate knowledge of literature, which after all is most essential. I dismiss consideration of the disciplinary effect for that is common to all studies involving hard intellectual labor.

Fundamental in the work of the lawyer is the investigation of truth. This investigation he carries on under great disadvantages, because his material is the infinite multitude of facts of human life continually shifting and varying, imperfectly understood at the best, and subject to continual modifications. He can carry on no exact experimentation in his work, and his instru-

ment in his investigation is language considered as a vehicle for the exact expression of thought. I know that it is commonly thought that the lawyer is not primarily concerned with the investigation of truth, but rather with the success of a particular cause of interest; I had that opinion myself when I began practicing, but any professional man who is worth his salt, if he ever held that opinion, changes it before he achieves substantial success. Primarily the interest of the lawyer is the interest of his client, but every lawyer who attains any great measure of success comes to realize that he best fulfils his professional duty who serves his client with full recognition of his higher allegiance to the truth.

For the purposes of this investigation he must learn to pick out from the mass of circumstances, relevant and irrelevant, essential and unessential, the controlling facts. He must learn to see them clearly, and to perceive them in all their relations and bearings uninfluenced by imagination or by sympathy, but making due allowance for the effect of imagination and sympathy upon others. A prime characteristic of the classical literature, and particularly the Greek, is an ever-present sense of measure and proportion, clear perception of the idea in mind and adequate expression of it, a perfect command of all the resources of expression and of all the powers of the mind, so that no one either dominates or is dominated by another. The study of such literature to the point which I have suggested, when you can really sense it without looking through the pages of the dictionary, will give, as I think, better than anything else can give, the ability essential for professional success. In this connection it has been suggested that Latin is of more importance than Greek. With that point of view I cannot agree; for the purposes I have indicated, Greek seems to me to be more important than Latin.

As social relations become more complex and the huge accumulation of material resources and of the apparatus of material civilization grows ever greater—so grows the difficulty of attaining real knowledge and mastery, and so grows the need of it. And so also, the importance of the profession of the law increases as an interpreting and co-ordinating power. And so too grows the necessity of a sound method of classical training for those who would discharge the full measure of service that the profession owes to society.

VI. CONCLUDING REMARKS

THE CHAIRMAN, HON. LEVI I. BARBOUR
Of the Detroit Bar, Regent of the University of Michigan

Aside from the point of view of the professions, the value of the humanistic studies as making life worth living ought to be emphasized. These studies are of more value than any others for the character which they give to life.

In this country we have made a very grave mistake in reducing the requirements for the bachelor of arts degree so that almost any study, or a half-dozen miscellaneous studies pursued as the student may desire, will entitle him to this degree: that is, to a reputation for knowing something which he does not know, and of having earned something that he has not earned. I should like to go back to the old condition of things, when the degree of bachelor of arts meant classical education.

VII. APPENDIX TO THE PAPER OF MR. MERRITT STARR

An important contribution to the literature of the subject is the address of Dean Henry Wade Rogers, formerly of the University of Michigan, on the requirements for admission to the different law schools and for the different legal degrees, from which I am permitted to make the following extracts.[1]

In England, Oxford University does not confer the law degree upon one who is not a graduate in arts, either of Oxford University or of some university which Oxford is willing to recognize.

In Scotland, no university can confer the degree of LL.B. on anyone who has not already obtained an arts degree.

In Ireland, the LL.B. degree is granted after two years of law study to those who hold an A.B. degree.

In France, to be entered at the *École de droit,* the student is required to produce, *inter alia,* the diploma of *bachelier de lettres* or, if he has not studied in France, an equivalent qualification.

No American law school has as yet conditioned its law degree absolutely in the attainment of an academic degree. Harvard in 1896–97 made the possession of such a degree necessary for matriculation as a regular student. But persons without such a degree can still be admitted at Harvard as special students, and can obtain the law degree if they attain a sufficiently high standing on the examinations. And the same rule practically exists at Columbia.

Yale University recently announced that, beginning with the academic year 1909, it will require students to have had the equivalent of at least two full years of work of collegiate grade.

Two years of college work is also to be required, or is already required, by the law schools connected with the state universities of North Carolina, Ohio, West Virginia, and Wisconsin, and by that of Trinity College at Durham, North Carolina. Within the immediate future other schools will, no doubt, take similar action. With foreign universities insisting on the degree requirements, American universities cannot long remain content with a diploma from a high school as the admission requirement of their professional schools.

. . . . . .

A discussion in the Bar Association of Texas, in 1900, sheds considerable

[1] The President's Address at the meeting of the Association of American Law Schools at St. Paul, August 30, 1906.

light on conditions in that state. One of the professors of the law school of the state university declared that persons were being constantly admitted to the bar of Texas who were without qualifications. "Many of these young men," he said, "secured license by knowing what questions would be asked, and through the kindness of some friend on the board of examiners who would say: 'Oh, he is a common-sense fellow; he will make a lawyer some day.'" And the president of the association, in 1894, in his address declared that in his experience of nineteen years he could call to mind only one applicant who had been rejected. In 1903 the Committee on Legal Education reported in favor of requiring all applicants to be examined on literary subjects, but the association, after a lengthy discussion, rejected the recommendation. One member, who could not conceal his contempt for the suggestion that applicants should pass an examination in elementary Latin, announced that the dead languages were dead and had been dead for a long time; that he had never derived any benefit from them, and that he would not know them if he met them in the street. All of which may have been true, without impairing the wisdom and value of the committee's recommendation. But in his mind it settled the matter conclusively and at once against the report. Another participant in the discussion was one who could see no reason for expecting a lawyer to know anything about history, as he himself was unable to tell, as he said, "without severe deliberation," whether James I followed Charles I or Charles II. He frankly confessed that he did not believe it made an iota of difference whether James died before Charles was born or was born after Charles died. Still another, again recurring to the Latin recommendation, effectually disposed of it by saying: Judge Bleckley, of the Supreme Court of Georgia, "don't know any more about Latin than a pig, and yet he is acknowledged to be, perhaps, the greatest living judge in the South today." Having disposed of the Latin recommendation in the manner indicated, he next gave attention to the recommendation as to mathematics. Declaring his conviction that a knowledge of mathematics had no bearing whatever on one's qualifications to practice law, he demonstrated the truth of his assertion by saying: "I bet there are not two lawyers present who can define that word 'quadratics.' I know I can't. Talk about requiring that examination, I bet there are not five lawyers present who can define what it means, or care what it means."

. . . . . .

It is impossible longer to view with complacency the conferring of the LL.B. degree for one year, or even two years, of law study. Now that there are sixty-four law schools in this country which grant it only to those who have studied for three years, it is not less disturbing to find schools conferring the master's degree in law at the end of a second or third year.

LIBRARY OF CONGRESS
0 029 501 321 7